



Paper No. 7

PATENT ADMINISTRATOR
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OCT 10 2002

OFFICE OF PETITIONS

In re Application of
Dalton, Damiano, and Cress
Application No. 10/024,017
Filed: December 21, 2001
Attorney Docket No. 114205.1501
For: COMPOUNDS AND METHODS FOR MODULATING
CELL-ADHESION MEDIATED DRUG RESISTANCE

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:
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This is a decision on the petition under 37 CFR 1.47(a), filed June 4, 2002.

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). Failure to respond will result in abandonment of the application. Extensions of time are available and will be governed by 37 CFR 1.136(a).

The above-cited application was filed without a properly executed oath or declaration. In response, the Office mailed a "Notice to File Missing Part of Non-Provisional Application" (the "Notice") on February 4, 2002. The Notice set forth a period for reply of two months. On June 4, 2002, in response to the Notice, petitioner filed the instant petition and supplementary evidentiary documents. Petitioner also obtained an extension of time within the second month.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and,
- (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks item (1) as set forth above.

As to item (1), sufficient proof was not provided that the entire application was sent to inventor Dalton not just the declaration and power of attorney. Guidance as to what is required to be sent to the non-signing inventor before a refusal to sign can be alleged is found in the *Manual of Patent Examining Procedure*, Section 409.03(d), which reads, in pertinent part:

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature.

It appears from the instant petition and the letter of June 29, 2001, from Sheri Shuman to the non-signing inventor that all that was sent to the non-signing inventor was the declaration and power of attorney. There is no indication from any of the other documents filed with the instant petition that the entire application was sent to the non-signing inventor as required. It is, therefore, concluded that Item (1) above has not been satisfied. Any renewed petition filed must provide documentary evidence demonstrating that the entire application was sent to the non-signing inventor for his review.

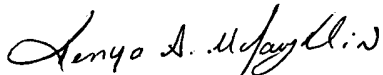
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6919
Attn: Office of Petitions

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